



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2007-1034; FRL-9689-1]

Disapproval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Open Burning Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to disapprove a State Implementation Plan (SIP) revision submitted by the State of Utah on December 10, 1999. This revision to R307-202 Emission Standards: General Burning authorizes the State to extend the time period for open burning. EPA is proposing to disapprove the submitted revision because it does not meet the requirements of section 110(l) of the Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before **[insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-1034, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: freeman.crystal@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

- Mail: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2007-1034.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Freeman, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6602, freeman.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The initials AQS mean or refer to Air Quality System.

- (ii) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials NAAQS mean or refer to the National Ambient Air Quality Standards.
- (v) The initials NO_x mean or refer to nitrogen oxides.
- (vi) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (vii) The initials PSD mean or refer to prevention of significant deterioration.
- (viii) The initials SIP mean or refer to State Implementation Plan.
- (ix) The words Utah or State mean the State of Utah.

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I. General Information

1. *Submitting CBI.* Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- d. Describe any assumptions and provide any technical information and/or data that you used.
- e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- f. Provide specific examples to illustrate your concerns, and suggest alternatives.
- g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- h. Make sure to submit your comments by the comment period deadline identified.

II. Background

On December 10, 1999, the State of Utah submitted a SIP revision to Rule R307-202 Emission Standards: General Burning. This rule contains the following provisions: definitions and exclusions, community waste disposal, general prohibitions, permissible burning –without permit, permissible burning with permit, and special conditions.

The proposed revision is found within the ‘permissible burning with permit’ in section R307-202-5(3)(e)(i). The revision extends the time period during which open burning could be authorized. The current burning period in the rule is from March 30 to May 30, the revision would extend the beginning of the burning period to March 1. This would allow an additional 30 days to the open burning period. The revision to the rule is based on a request from the Washington County Mayors Association to change the beginning date to accommodate areas of the State that were dry enough to burn earlier in the year.

III. What is the State Process to Submit These Materials to EPA?

Section 110(k) of the CAA addresses EPA’s rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

The State of Utah’s Department of Environmental Quality, Air Quality Board held public hearings to amend Rule R307-202 Emission Standards: General Burning on June 3, 1999, and also on June 30, 1999, when the revision was adopted. On December 10, 1999, Utah submitted a SIP revision to R307-202-5 to extend the burning period.

EPA has reviewed the submittal from the State of Utah and has determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. The SIP submittal from Utah became complete by operation of law six months after the submission date.

IV. EPA's Review and Technical Information

EPA is proposing to disapprove Utah's SIP revision submitted on December 10, 1999. Any submittal for a SIP revision must meet section 110(l) of the CAA. Section 110(l) of the Act states that EPA shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 171 of the CAA), or any other applicable requirement of the Act. An analysis should have been conducted by the State and included in the submittal showing what effect the relaxation would have on emissions of criteria pollutants. Since Utah did not provide a section 110(l) analysis, EPA lacks sufficient information to determine whether the proposed SIP relaxation would not interfere with any applicable requirement concerning attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), Prevention of Significant Deterioration (PSD) increment, or any other requirement of the Act.

EPA reviewed data from the Air Quality System (AQS) Raw Data Reports for PM_{2.5} violations in the entire State of Utah for the month of March from 1999 to present. These reports can be found in the docket as supporting and related materials. The PM_{2.5} 24-hour NAAQS is 35 µg/m³ for which the counties of Salt Lake, Utah, Davis and parts of Box Elder, Weber, Tooele and Cache are designated nonattainment (74 FR 58688, November 13, 2009). Based on our review, Cache County, specifically the City of Logan, showed a total of fifteen violations of the

PM_{2.5} standard over the years: 2001, 2004, 2005, and 2007. The AQS site ID that showed the violations in the years above was 49-005-0004. For the year 2001, the PM_{2.5} violation was recorded on March 2 with a concentration of 37.5 µg/m³. In 2004 there were five violations on March 8, 9, 10, 12, and 13, with concentrations of 35.5 µg/m³, 53.4 µg/m³, 52.9 µg/m³, 41.9 µg/m³, and 52.3 µg/m³, respectively. For the following year of 2005, there were seven violations on the dates of March 1, 2, 4, 7, 8, 10, and 11, with concentrations of 54.5 µg/m³, 36.6 µg/m³, 68.4 µg/m³, 49.6 µg/m³, 71.0 µg/m³, 62.0 µg/m³, and 44.6 µg/m³, respectively. The last year that this monitor showed violations was in 2007, on March 6 and 7, with concentrations of 46 µg/m³ and 43 µg/m³, respectively. In Salt Lake County, the North Salt Lake City monitor also showed an exceedance in 2007, on March 6, with a concentration of 38 µg/m³. On March 30, 2010, there were ten exceedances that occurred in four counties: Davis, Salt Lake, Utah, and Tooele, which the State has flagged as exceptional events. The Bountiful monitor in Davis County and the Tooele City monitor in Tooele County recorded a concentration of 42 µg/m³ and 57 µg/m³, respectively. Four monitors in Salt Lake County: Cottonwood, Magna, Hawthorne, and Rose Park, showed concentrations of: 56 µg/m³, 67 µg/m³, 50 µg/m³, and 65 µg/m³, respectively. Additionally, four monitors in Utah County: North Provo, Lindon, Highland, and Spanish Fork, showed concentrations of 53 µg/m³, 56 µg/m³, 61 µg/m³, and 48 µg/m³, respectively.

Based on our analysis of the AQS data above, EPA finds that the relaxation of the open burning rule could contribute to further degradation of air quality within the State of Utah and especially in the PM_{2.5} nonattainment areas because violations of the PM_{2.5} standard have been

recorded during periods covered by the proposed extension of the open burning period. In the absence of a section 110(l) analysis or demonstration by the State of Utah showing that extending the burning period would not cause a PM_{2.5} violation, EPA cannot determine that this revision would not interfere with attainment and maintenance of the NAAQS. Therefore, EPA is proposing to disapprove this revision to R307-202 Emission Standards: General Burning.

V. Proposed Action

EPA is proposing to disapprove the SIP revision to R307-202 Emission Standards: General Burning submitted by the State on December 10, 1999. Without a section 110(l) analysis or demonstration, EPA finds that the revision relaxes the control on open burning and could potentially interfere with the attainment and maintenance of the NAAQS. EPA's review of the AQS data for Cache, Salt Lake, Davis, Utah, and Tooele Counties have shown violations of the PM_{2.5} standard during the proposed extension of the open burning period.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve or disapprove state choices, depending on whether they meet the criteria of the Clean Air Act. With this proposed action EPA is merely disapproving a state law as not meeting Federal requirements, and is not imposing additional requirements beyond those imposed by state law.

A. Executive Order 12866: Regulatory Planning and Review

Because the proposed disapproval only applies to a date change for Utah's General Burning window, this proposed action is not a "significant regulatory action" under the terms of

Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). The proposed disapproval only applies to a date change for Utah's General Burning window.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of

small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities.” 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA’s proposal consists of a proposed disapproval of Utah’s General Burning rule submission. The revision would extend the General Burning window an extra month, which requires a CAA section 110(l) analysis to show no relaxation of the rule. Since Utah did not submit a section 110(l) analysis for this revision EPA is proposing disapproval. The proposed disapproval of the SIP, if finalized, merely disapproves the state law as not meeting federal requirements and does not impose any additional requirements.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by State, local, or Tribal governments or the private sector in any one year. In addition, this proposed rule does not contain a significant federal intergovernmental

mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely addresses the State not fully meeting its obligation under section 110(l) of the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and

consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this proposed rule is disapproving a possible relaxation to Utah’s General Burning rule, it will have a beneficial effect on children’s health by not allowing additional air pollution.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it disapproves a possible relaxation of Utah's rule where increases in emissions are possible.

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP being disapproved would not apply in Indian country located in the state, and it would not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 6, 2012

Signed: James B. Martin,
Regional Administrator,
Region 8.

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